

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



FILED

SEP 27 2007

CLERK, US DISTRICT COURT, W.D.N.Y.

BOOTH OIL SITE ADMINISTRATIVE
GROUP,

Plaintiff,

v.

ORDER
98-CV-696(A)

SAFETY-KLEEN CORPORATION, et al.

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1). During pretrial proceedings, the parties filed various motions for summary judgment and to dismiss. On June 29, 2007, Magistrate Judge Schroeder filed a Report and Recommendation, addressing the various motions.

Both plaintiff and defendants Booth Oil Co., Inc., Lonsdale Slater Schofield, Ahsen Yelkin, EC Holdings, Inc., Joseph Chalhoub, Breslube Industries Limited, and Speedy Oil Services, Inc., filed objections to the Report and Recommendation on August 15, 2007. Oral argument on the objections was held on September 19, 2007. On September 24, 2007, defendant Lonsdale Slater Schofield filed a reply memorandum, with the Court's permission.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which

objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the Court:

GRANTS Lonsdale Schofield's motion (Dkt. #162), to dismiss the first cause of action (CERCLA), without prejudice;

DENIES Lonsdale Schofield's motion (Dkt. #162), to dismiss the fourth cause of action (enforcement of Booth Oil's Liquidating Plan);

GRANTS Lonsdale Schofield's motion (Dkt. #162), to dismiss the sixth cause of action (New York Debtor & Creditor Law § 276);

GRANTS Lonsdale Schofield's motion (Dkt. #162), to dismiss the seventh cause of action (New York Debtor & Creditor Law § 273); and

DENIES Lonsdale Schofield's motion (Dkt. #162), to dismiss the eighth cause of action (breach of fiduciary duty);

GRANTS Schofield Oil's motion (Dkt. #162), to dismiss the first cause of action (CERCLA), without prejudice;

GRANTS Schofield Oil's motion (Dkt. #162), to dismiss the fourth cause of action (enforcement of Booth Oil's Liquidating Plan), without prejudice on the ground that it is not properly before the court;

GRANTS Schofield Oil's motion (Dkt. #162), to dismiss the sixth cause of action (New York Debtor & Creditor Law § 276), without prejudice on the ground that it is not properly before the court;

GRANTS Schofield Oil's motion (Dkt. #162), to dismiss the seventh cause of action (New York Debtor & Creditor Law § 273), without prejudice on the ground that it is not properly before the court;

ORDERS that Schofield Oil be terminated as a defendant in this action;

DENIES Booth Oil's motion (Dkt. #165), for partial summary judgment dismissing the fifth cause of action (accounting);

DENIES Joseph Chalhoub's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the first cause of action (CERCLA);

DENIES Joseph Chalhoub's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the second and third causes of action (Navigation Law liability);

DENIES Joseph Chalhoub's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the fourth cause of action (enforcement of Booth Oil's Liquidating Plan);

GRANTS Joseph Chalhoub's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the sixth cause of action (New York Debtor & Creditor Law § 276);

GRANTS Joseph Chalhoub's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the seventh cause of action (New York Debtor & Creditor Law § 273);

DENIES Joseph Chalhoub's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the eighth cause of action (breach of fiduciary duty);

DENIES Breslube Industries' motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the first cause of action (CERCLA);

DENIES Breslube Industries' motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the second & third causes of action (New York Navigation Law);

GRANTS 118958 Canada's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the fourth cause of action (enforcement of Booth Oil's Liquidating Plan), without prejudice on the ground that it is not properly before the court;

GRANTS 118958 Canada's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the sixth cause of action (New York Debtor & Creditor Law § 276);

GRANTS 118958 Canada's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the seventh cause of action (New York Debtor & Creditor Law § 273);

ORDERS that 118958 Canada be terminated as a defendant in this action;

DENIES Speedy Oil's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the first cause of action (CERCLA);

GRANTS Speedy Oil's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the fourth cause of action (enforcement of Booth Oil's Liquidating Plan), without prejudice on the ground that it is not properly before the court;

GRANTS Speedy Oil's motion (Dkt. ##173 & 179), to dismiss and/or for summary judgment on the sixth cause of action (New York Debtor & Creditor Law § 276), without prejudice on the ground that it is not properly before the court;

GRANTS plaintiff's motion (Dkt. #175), for summary judgment against Booth Oil on the first cause of action (CERCLA liability);

GRANTS plaintiff's motion (Dkt. #175), for summary judgment against Booth Oil on the second and third causes of action (Navigation Law liability);

DENIES plaintiff's motion (Dkt. #175), for judgment in the amount of \$1,475,000.00, as a matter of law, against Booth Oil as damages on the environmental claims;

GRANTS plaintiff's motion (Dkt. #175), for a declaration that Booth Oil's transfer of \$450,000 to EC Holdings violated the terms of the Liquidating Plan;

GRANTS plaintiff's motion (Dkt. #175), for a declaration that Booth Oil's transfer of \$300,000 to Katherine Street Properties on August 15, 1994, violated the terms of the Liquidating Plan;

GRANTS plaintiff's motion (Dkt. #175), for a declaration that Booth Oil's transfer of \$275,000 to George Booth, III on October 7, 1994, violated the terms of the Liquidating Plan;

DENIES plaintiff's motion (Dkt. #189), for summary judgment against George Booth, III, Joseph Chalhoub, Lonsdale Schofield, EC Holdings, Ahsen Yelkin, and Katherine Street Properties with respect to the fourth cause of action (enforcement of Booth Oil's Liquidating Plan);

GRANTS plaintiff's motion (Dkt. #175), for summary judgment with respect to the fifth cause of action against Booth Oil (accounting);

DENIES Ahsen Yelkin's motion (Dkt. #183), to dismiss and/or for summary judgment on the first cause of action (CERCLA);

DENIES Ahsen Yelkin's motion (Dkt. #183), to dismiss and/or for summary judgment on the second & third causes of action (Navigation Law liability);

GRANTS Ahsen Yelkin's motion (Dkt. #183), to dismiss and/or for summary judgment on the fourth cause of action (enforcement of Booth Oil's Liquidating Plan); and


DENIES Ahsen Yelkin's motion (Dkt. #183), to dismiss and/or for summary judgment on the sixth cause of action (New York Debtor & Creditor Law § 276);

GRANTS EC Holdings' motion (Dkt. #183), to dismiss and/or for summary judgment on the fourth cause of action (enforcement of Booth Oil's Liquidating Plan); and

DENIES EC Holdings' motion (Dkt. #183), to dismiss and/or for summary judgment on the sixth cause of action (New York Debtor & Creditor Law § 276).

Counsel shall appear on October 31, 2007, at 9:00 a.m. for a meeting to set a trial date.

IT IS SO ORDERED.


HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: September 28, 2007